

“ Information society and intellectual property – The search for new ways of paying authors ”

Arnaud Lucien, Bruno Ravaz

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Arnaud LUCIEN
Bruno RAVAZ



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DE L'INFORMATION
ET DE LA COMMUNICATION



*« Information society and intellectual property –
The search for new ways for paying authors »*

- *Recent developments regarding penal code jurisprudence pertaining to online downloading.*
- *Given up the offence of forgery in favour of criminal offense of infringement*
- *The criminal offense of the technical supply of services at the origin of downloading.*
- *Conditions of the implementation of the law: a central question.*
- *The "streaming" or the come back of the exception of private copy.*

Recent developments regarding french criminal code jurisprudence pertaining to online downloading.

- Distinction between acts recovering from the exception of private copy and those establishing a public distribution.
- Criterion of the public distribution became clearly the condition of the incrimination of offence of forgery.
- A contrario, if the collective use was not demonstrated, as well as the public distribution, the malpractice of forgery was not established and the exception of private copy was recognized.

Given up the offence of forgery in favour of criminal offense of infringement

- The solution of a « global licence » : rejected.
- The issue proclaimed by the project DADVSI: penalization by the incrimination of infringement.
- A distinction preserved between the simple downloading and the public distribution.

The criminal offense of the technical supply of services at the origin of downloading.

- Creation of a new criminal offense steered against the creators and the distributors of sharing programs.
- Softwares intended for collective work, research or exchange of files not subject to royalties are not concerned by this ban, as the legislator refuses to censor "collective intelligence" tools.
- Nevertheless the terms used are indistinct enough to authorize several interpretations and, given in front of the different practices authorized by the already existing software, we may wonder where will be given the distinction between the legal devices and the illicit uses.

Conditions of the implementation of the law: a central question.

- The implementation of the new legislative measures announce for some take a hunting down of Internet users and the efficiency of such a law. Indeed, it is not possible " to put a policeman behind every Internet user " and the means employed to law will naturally have to remain proportional to penalty incurred.

The "streaming" or the come back of the exception of private copy.

- Other legal solutions, allow free access to protected works. Such is now the case with the "recording" "catching of" of "continuous stream" or "streaming". Thanks to these new processes, the payment of the authors is now confronted with a wider phenomenon.

Conclusion

- Anyway, if illegal downloaders feel threatened by this new legal legislation, they will rapidly change their methods. When taking the evolutions in information and communication technologies into consideration, the model of of compensation must be rethought.

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